

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-221735

DATE: February 4, 1986

MATTER OF: A & A Transfer & Storage, Inc.

## DIGEST:

Protest is untimely where not filed within 10 days after protester knew or should have known the basis of its protest. Protester's apparent lack of actual knowledge of 10-day filing requirement is not a defense to dismissal of its protest as untimely since protesters are held to have constructive notice of GAO Bid Protest Regulations through their publication in the Federal Register.

A & A Transfer & Storage, Inc. protests the award of a contract to any other bidder under invitation for bids (IFB) No. F01600-86-B-0011, issued by the Air Force for packing and crating services at Maxwell Air Force Base, Alabama. We dismiss the protest.

The protester states that it was notified by the Air Force on December 31, 1985, that award under one portion of the IFB (Schedule II, Area I) had been made to another bidder after the Air Force determined that the protester's bid was not low. The protester challenges the Air Force's determination, arguing that, after the Air Force discovered that the protester's bid omitted a price for one item under Schedule II, the Air Force improperly recalculated the bid using estimated quantities different from those in the IFB. The protester states that it then sent a letter to the procuring activity, dated January 9, 1986, asking for instructions on how to protest the decision to make award to another bidder. According to the protester, an official from the procuring activity telephoned the protester on January 15 to explain the protest procedures. This protest then was filed with our Office on January 27.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985), protests such as this one must be filed within 10 days after the protester knew or should have known the basis of protest. Here, the protester was

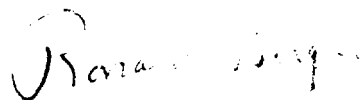
034457

or should have been aware of the basis of its protest on December 31, when it was advised of the Air Force's determination that its bid was not low. Since the protest was not filed with our Office until January 27, more than 10 days later, the protest is untimely and will not be considered.

It appears that the protester delayed filing its protest pending the Air Force's reply to its January 9 inquiry regarding the procedures for filing a protest. Even assuming the protester was unaware of the 10-day filing requirement until notified by the Air Force, however, the protester's lack of actual knowledge of our regulations is not a defense to dismissal of its protest as untimely. Our regulations are published in the Federal Register and protesters are charged with constructive notice of their contents. Milwaukee Industrial Clinics, S.C.--Reconsideration, B-220293.2, Oct. 18, 1985, 65 Comp. Gen. \_\_\_, 85-2 CPD ¶ 426.

Finally, the protester does not contend, and we do not find, that its January 9 letter to the procuring activity constituted a protest; as the protester states, that letter was solely a request for information on how to pursue a protest. See Reeves Brothers, Inc., et al., B-212215.2, et al., May 2, 1984, 84-1 CPD ¶ 491 (to constitute a protest, a letter must express dissatisfaction with agency action and request corrective action). Thus, there is no indication that the protest to our Office followed an initial timely protest to the Air Force. See 4 C.F.R. § 21.2(a)(3) (protest to GAO is timely if filed within 10 days after adverse agency action on an initial timely protest to the agency).

The protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel